

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC-SDNY
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DATE FILED: 9/10/2018

CAPITAL RECORDS, LLC, *et al.*,

Plaintiffs,

v.

VIMEO, LLC, *et al.*,

Defendants.

OPINION AND ORDER

No. 09-CV-10101 (RA)

EMI BLACKWOOD MUSIC, INC., *et al.*,

Plaintiffs,

v.

VIMEO, LLC, *et al.*,

Defendants.

No. 09-CV-10105 (RA)

RONNIE ABRAMS, United States District Judge:

Currently pending before the Court are the parties' supplemental briefs on summary judgment following the Second Circuit's remand of this case. Before proceeding to the merits of those motions, however, the Court must address Defendants' renewed motion to strike Plaintiff's 73-page "reply" to Vimeo's response to Plaintiff's Rule 56.1 Supplemental Statement of Undisputed Facts, originally submitted at Dkt. 104 and now in supplemented form at Dkt. 203.

As Defendants correctly point out, Local Civil Rule 56.1 does not provide for a "reply" in further support of a Rule 56.1 statement of undisputed facts. Plaintiffs, meanwhile, are correct that the Rule does not prohibit such replies. In the interest of a full consideration of all the issues in this case, the Court denies Defendants' renewed motion to strike. The Court is sympathetic,

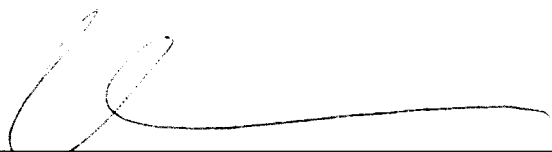
however, to Defendants' concerns about the potential unfairness of doing so. To alleviate that potential unfairness, the Court will allow Defendants to submit *either* a reply in further support of their own Rule 56.1 statement *or* a sur-reply to Plaintiffs' reply. They shall select one of these steps and take it no later than September 20, 2018. Whichever step Defendants choose, however, there will be no additional replies or sur-replies. In the event that the Court determines oral argument to be necessary or helpful on the outstanding summary judgment motions, it will so inform the parties.

Finally, the Court observes that the parties have not formally notified the Court as to whether they believe any additional supplemental briefing is required in light of this Court's decision granting in part and denying in part Defendants' motion to dismiss. *See* Dkt. 209 (No. 09-CV-10101). Accordingly, no later than September 28, 2018, the parties in case No. 09-CV-10101 are ordered to submit a joint letter to confirm that, and explain why, they apparently do not believe such briefing is necessary.

The Clerk of Court is respectfully directed to terminate the motion pending at Dkt. 182 in case No. 09-CV-10101 and Dkt. 172 in case No. 09-CV-10105.

SO ORDERED.

Dated: September 10, 2018
New York, New York



Ronnie Abrams
United States District Judge